Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- November 16, 1966

Appeal No. 9020 James L. and Jeane L. Dixon, appellants.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and unanimously carried, the following Order was entered at the meeting of the Board on November 29, 1966.

EFFECTIVE DATE OF ORDER -- March 23, 1967

ORDERED:

That the appeal from a decision of the Zoning Administrator given on June 22, 1966 ruling that premises 2344 Massachusetts Avenue, NW., was remodeled for the use as a dwelling and cannot be used as a chancery, lot 826, square 2507, be denied.

FINDINGS OF FACT:

(1) The subject property is located in an R-3 District.

(2) An exterior inspection of the property was made by the Board on November 14, 1966 and the site was found to contain a large four-story brick building with a garage built into the ground level of the building. The property is located in an area with many chanceries and other uses.

(3) On June 22, 1966 the Zoning Administrator ruled that the subject premises had been remodeled for use as a dwelling, and in light of the 1964"Chancery Act", the premises could not be used as a chancery.

(4) On October 4, 1966 the Zoning Administrator sent a memorandum to the Assistant Engineer Commissioner setting forth facts in this case.

(5) Appellants acquired the subject property in 1962.

(6) On August 5, 1952 a certificate of occupancy No. A-16614 was issued for the Sheridan School to use the first, second and third floors of the subject premises as a "private school with day students only - no students sleeping in the building."

(7) On April 7, 1961 a survey of the subject premises was made to determine compliance with the 1961 Building Code. Numerous deficiencies were found to exist in the building. Notice for correction of the deficiencies was served and enforcement procedures begun.

(8) The school's lease expired in June 30, 1962 and the extensive deficiencies existing in the building caused the school administration to believe that other quarters should be sought.

(9) The Department of Licenses and Inspections ordered that use of the schol for school purposes cease no later than June 15, 1962 and the school vacated the premises.

(10) Subsequent to the acquisition of the property by the appellants, building repair permits were issued from December 1962 through March 1963 for various kinds of repair. All of the permits, filed by agents for appellants, indicated that the premises were proposed to be used as a dwelling.

(11) Appellants assert that the agents were in error when they filed for the various permits and that the subject premises was being remodeled for use as a chancery. No such evidence appears on any of the permits.

(12) The Zoning Administrator has in his file affidavits submitted by the appellants indicating that the persons filing for the various permits acted contrary to instructions with reference to the use to be made of the subject premises. One of the affiants signed three (3) applications for building repair permits, each indicating that the present and proposed use of the premises is a dwelling. One of the affiants signed none of the applications for building repair permits.

(13) On May 12, 1965 Appeal No. 8191 was filed before the Board of Zoning Adjustment by an agent for the appellants seeking use of the subject premises as a "Day school of languages, secretarial subjects, cultural center, lectures (Private School)." The appeal was denied by the Board on May 17, 1965.

(14) On September 28, 1966 the Zoning Administrator along with a representative of the appellants made an inspection of the subject premises. The building was vacant. The Zoning Administrator describes the premises as follows:

"It is a four-story and basement, row-type building with masonry walls and wood floor joist construction. The first, second, third and fourth floors each have three rooms and a bathroom (first floor has a powderroom) On the first floor there is a modernized kitchen. While not excessively large, it is fully equipped containing a wall-type ove, electric refrigerator, four-burner electric counter-type range, sink and dishwasher, amply counter, storage and cabinet space. The basement (I did not go to it) is well laid out with a two car garage, rooms for habitation, kitchen and bath facilities. The house has been newly painted throughout and the floors refinished. There is no evidence of any recent partition work on the upper floors. An elevette (three passenters) has been installed in the building. Toilet fixtures have been modernized. Structural framing has been installed to strengthen the halls and stairs. Electric fixtures, not in place, apparently will be installed as part of the final decor."

(15) Counsel for the appellants stated that they had made a contract to sell the subject premises to the Lybian Government for use as a chancery.

(16) Counsel likewise asserts that since agents for appellants erred in filing the building repair permits and contrary to the desires of appellants, the subject permits might be amended to show the original intent of the owner to use the premises as a chancery. Further, since the permits were applied for prior to February 18, 1964, under the "Chancery Act" the Board could authorize use of the premises as a chancery.

(17) The Zoning Administrator has refused to accept the above argument and refuses to amend the permits.

(18) There is no record of the appellants, or earlier owners, having asked for or receiving approval of the Board for a chancery use at the subject premises prior to enactment of the Chancery Act, October 13, 1964.

(19) The Sheridan-Kalorama Neighborhood Council has recorded (See Exhibit No. 4) its opposition to the granting of this appeal.

(20) By letter of November 14, 1966 (See Exhibit No. 5) the Assistant Chief of Protocol of the Department of State Expresses support of this appeal.

OPINION:

The Chancery Act of October 13, 1964 clearly prohibits constructing, altering, repairing, converting, or occupying a building for use as a chancery, in any residential district, except the medium-high censity (R-5-C) and the high density (R-5-D) apartment house districts, provided Board of Zoning Adjustment approval is received.

In the opinion of the Board, had the appellants applied for building repair permits for a chancery use, the Zoning Administrator would have been compelled to deny the permits since a chancery use of the premises was never approved by the Board of Zoning Adjustment in keeping with the Zoning Regulations related to chanceries in effect between May 12, 1958 and October 13, 1964.

There is no evidence of record in this case to indicate any use of the subject premises, at any time, as a chancery before the effective date of the legislation. There is only testimony that the owner intended the property to be used as a chancery after remodeling and a purported error committed by agents of the owner in not conveying that intent when obtaining various building repair permits. We agree with the Zoning Administrator's interpretation --- that the owner is responsible for the acts of his agent. Further, the remodeling work was completed, apparently to the satisfaction of the owners. It cannot be unalterably stated that the remodeling work was only of such a character as to make the premises suitable only for a chancery. Moreover, it is entirely reasonable to conclude that the premises were remodeled for suitability as a dwelling, as stated in the various applications for permits.

The 1964 Act defines "chancery" as a "building containing business offices of the chief of a diplomatic mission of a foreign government where official business of such government is conducted . . . ." Clearly, a residence and a chancery were not intended to be construed in the same way or as the same thing. The Zoning Regulations defines "dwelling" as a "building designed or used for human habitation. When used without a qualifying term, it shall mean a one-family dwelling." The subject premises would come within that definition of the Zoning Regulations and the owner is bound by that definition. We must presume that the owners' agents filing applications for permits were familiar with that

definition, and thus understood the import of the term dwelling when placed in the application.

This Board is bound by the language of the Chancery Act and the intent of the Congress who passed this legialtion. Nothing in this case convinces us to deviate from the clear language of the Act. We find no authority which would permit us to read the Act as appellants desire. Therefore, we affirm the decision of the Zoning Administrator.